

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Deployment of Wireline Services )  
Offering Advanced Telecommunications )  
Capability )

CC Docket No. 98-147

COMMENTS OF  
WESTEL, INC.

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## SUMMARY

Westel commends the Commission for its rulings that advanced services are fully subject to the interconnection, unbundling and resale provisions in Section 251 of the Communications Act. Those rulings will facilitate the rapid provision of advanced communications services by incumbent local exchange carriers (“ILECs”) and new entrants alike.

At the same time, Westel opposes the FCC’s proposal to establish a separate affiliate approach whereby ILECs can provide advanced services outside the ILEC requirements of Section 251(c). Such an approach would enable ILECs to end-run Section 251(c) by developing advanced services and the supporting infrastructure through affiliates established solely for that purpose. The adverse impact would not be limited to advanced services, as ILECs can be expected to use their separate affiliates to offer a full range of retail services completely outside the market-opening provisions in the Act.

Should the Commission decide to move forward with the separate affiliate approach, Westel notes that a separate affiliate qualifies as a “successor or assign” of an ILEC, and hence must comply with Section 251(c), if it receives any advantage whatsoever – including a transfer or sharing of assets, personnel or goodwill – from its ILEC parent. Further, when an affiliate qualifies as an ILEC’s “successor or assign,” its entire operations must comply with Section 251(c).

In addition, the separation and nondiscrimination standards proposed by the Commission are not nearly strong enough. Those standards may be adequate in the Section 272 environment where the local market has been completely opened, but they are patently inadequate in the pre-competitive market that exists today for virtually every ILEC. The Commission must require at least 40% non-ILEC ownership of the affiliate to ensure that it is truly separate from the ILEC. Further, the Commission must forbid the

affiliate from providing retail services through total service resale under Section 251(c)(4) if the separate affiliate approach is to have any hope of ensuring fair competition among CLECs while bolstering the network element regime under Section 251(c)(3). Westel also suggests modifications to the FCC's proposed separation and nondiscrimination rules to ensure that the affiliate is truly separate from the ILEC. The Commission should require ILECs and their affiliates to file and receive approval of public compliance plans before they implement the separate affiliate approach.

Westel strongly supports the Commission's proposal to adopt new rules enabling CLECs to enter into the most efficient and pro-competitive collocation arrangements. Westel urges the Commission to replace the old distinction between "physical" and "virtual" collocation with a diverse array of options for caged and cageless collocation. The Commission should eliminate unnecessary restrictions upon collocation configurations and ensure that the ILEC affiliates do not use more than 33% of the available collocation space in a central office and never occupy the last available space.

Lastly, Westel asks the Commission to rule that the extended loop (involving loop, transport and multiplexing) is a network element which the ILECs must offer on an unbundled basis under Section 251(c)(3).

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**COMMENTS OF  
WESTEL, INC.**

Westel, Inc. ("Westel")<sup>1</sup>, by its attorneys, respectfully submits the following comments on issues raised in the Notice of Proposed Rulemaking portion of the Commission's *Memorandum Opinion and Order, and Notice of Proposed Rulemaking*.<sup>2</sup>

**I. INTRODUCTION**

As a new competitor in the local telecommunications market, Westel commends the Commission for issuing declaratory rulings that will facilitate the rapid provision of advanced telecommunications services by incumbents and new entrants alike.<sup>3</sup> By concluding that "advanced services" are subject to the interconnection, unbundling and resale provisions of Section 251(c) of the Communications Act, the Commission has

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<sup>1</sup> Westel, Inc. is a privately-held telecommunications company headquartered in Austin, Texas. Founded in 1981, Westel was certificated as a competitive local exchange carrier ("CLEC") in Texas in 1995. As a regional company, Westel's goal is to provide a full range of telecommunications services on a one-stop-shopping basis throughout its operating region.

<sup>2</sup> *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147 et al., FCC 98-188 (rel. August 7, 1998) (hereinafter *NPRM*).

<sup>3</sup> See *NPRM* at ¶¶ 11, 32, 41, 46, 52-54, 57-58 and 61.

made great strides towards removing the obstacles that ILECs have created to hinder the opening of local markets to competitive new entry.

At the same time, Westel has serious misgivings about the *NPRM's* advanced services affiliate approach, which Westel believes will severely compromise the viability of existing and prospective local entrants on a wide scale. Having built up a substantial regional long distance customer base, Westel now faces the competitive need to provision telecommunications services (including advanced services) to its customers on a one-stop-shopping basis. Section 251(c) is essential to that effort, and similar efforts by hundreds of other new entrants, because CLECs lack the capability to create from scratch the entire infrastructure necessary to offer such services on a competitive basis to their customers. As Congress intended, Section 251(c) enables new local entry by permitting CLECs to offer advanced, local and other services through the purchase of unbundled network elements or on a total service resale basis. However, if ILECs are authorized to provide advanced services through affiliates not subject to Section 251(c) obligations, then the ILECs can provide advanced services and the essential underlying network functionalities exclusively through their affiliates, thereby frustrating Congress' intention that Westel and other CLECs should be able to enter the local market through cost-based use of the ILECs' monopoly local exchange network and services. In effect, the ILECs will be able to use unregulated separate affiliates to stymie a significant segment of competitors.

Equally important, Westel urges the Commission to step back and consider the strong likelihood that the ILECs will use separate affiliates to provide not only data services, but a full range of retail telecommunications services on a one-stop-shopping

basis, completely outside of Section 251(c), thereby maximizing the market foreclosure they are able to achieve through the separate affiliate approach. This likelihood is too dangerous to ignore. Although the FCC's sustained attempts to implement Section 251(c) have met with only mixed success to date due to the intransigence of the ILECs, Westel urges the Commission to increase its efforts to implement and enforce the statute – the Commission's collocation proposals in this proceeding are a commendable example of such efforts – rather than to resort to the untried and potentially harmful separate affiliate approach. At a minimum, if the Commission moves forward with the separate affiliate approach, it should rigorously ensure true and total separation between an ILEC and its affiliate such that the affiliate does not obtain any competitive advantage from the ILEC's history and status as a monopoly local services provider.

## **II. THE FCC SHOULD FOLLOW THE 1996 ACT BY REQUIRING ILECS TO OFFER ADVANCED SERVICES ON AN INTEGRATED RATHER THAN A SEPARATED BASIS**

The ILECs' continuing refusal to comply with Section 251 has resulted in delayed market entry, increased costs, and lost customers and revenues for Westel and other CLECs. Westel urges the Commission to consider whether the separate affiliate approach will make the current situation worse rather than better. In Westel's view, enabling the ILECs to create separate affiliates completely outside Section 251(c) will create a strong incentive for the ILECs to use their affiliates as the sole vehicle for providing advanced services and developing the infrastructure necessary to provide such services, while relegating CLECs to a local exchange network that is increasingly antiquated and less useful, particularly for advanced services. Westel is concerned by the

serious risk that Section 251(c) will be thwarted and perhaps even superseded as a viable entry mechanism for would-be competitors to the ILECs.

If, however, the Commission moves forward with the separate affiliate approach, Westel believes that the Commission should rigorously implement the statutory provisions regarding the scope of the ILEC requirements in Section 251(c). In particular, Section 251(c) applies to *any* entity that qualifies as a “successor or assign” of an ILEC.<sup>4</sup> Westel submits that any advantage an affiliate receives from its ILEC parent – whether it be in the form of a transfer or sharing of assets, personnel or goodwill – qualifies the affiliate as a “successor or assign” under Section 251(h)(1)(B)(ii). An affiliate must not be permitted to evade the statute’s ILEC requirements if it receives any competitive benefits stemming from its parent’s status as a monopoly local exchange provider. Further, when an affiliate qualifies as a successor or assign, the affiliate’s entire business operations (not just those assets transferred from the ILEC) are required to be fully subject to Section 251(c).<sup>5</sup>

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<sup>4</sup> See 47 U.S.C. § 251(h)(1)(B)(ii).

<sup>5</sup> As a member of CompTel, Westel continues to support the petition filed by CompTel and two other industry associations. See *Petition for Declaratory Ruling or, In the Alternative, for Rulemaking*, submitted by CompTel, Florida Competitive Carriers Association and Southeastern Competitive Carriers Association, CC Docket No. 98-39, filed March 23, 1998 (“*CompTel Petition*”). The *CompTel Petition* shows that ILEC local service affiliates that obtain any resources or other benefits from their ILEC parents qualify as ILEC “successors or assigns” under Section 251(h)(1)(ii). Westel supports this proposition and requests that the Commission address this argument herein.



### **III. IF THE COMMISSION AUTHORIZES A SEPARATE AFFILIATE APPROACH, MORE RIGOROUS SEPARATION STANDARDS ARE REQUIRED**

If the Commission decides to authorize advanced services affiliates, the separation requirements adopted must be stringent enough so that the affiliates are not successors or assigns.<sup>6</sup> Further, those requirements must ensure that the affiliate does not qualify as a “comparable” carrier to its ILEC parent, which also would require it to comply with the ILEC requirements under Section 251(c).<sup>7</sup> In articulating the separation and nondiscrimination safeguards, the Commission must ensure that (1) the affiliate is “truly separate”<sup>8</sup> from the ILEC; and (2) the affiliate functions “just like any other competitive LEC. . . .”<sup>9</sup> Unless the Commission vigorously follows these two principles, its efforts will harm, rather than help, competition.

Westel respectfully submits that the separation requirements proposed in the *NPRM* are inadequate. If the Commission is serious about establishing “truly separate” affiliates, it must adopt additional rules that remove *all* advantages of incumbency, and avoid rules which permit the expedient creation of *alter egos* of the ILECs. Otherwise, consumers would have essentially the same offerings they would receive if the ILEC offered advanced services on an integrated basis, with the only difference being that

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<sup>6</sup> See 47 U.S.C. § 251(h)(1)(B).

<sup>7</sup> 47 U.S.C. § 251(h)(2).

<sup>8</sup> *NPRM* at ¶ 86.

<sup>9</sup> *Id.* at ¶ 87.

competitors, such as Westel, would be restricted in their ability to offer competing services in the manner contemplated by Congress.

**A. To Ensure that an ILEC Affiliate is “Truly Separate,” the Commission Must Adopt Stronger Safeguards**

The separation requirements proposed in the *NPRM*, which are similar to those in Section 272,<sup>10</sup> are insufficient for the type of affiliate contemplated in this proceeding. Indeed, the rules in Section 272 are premised on a competitive situation than is not yet in place, namely, that the BOCs have fully complied with Section 251(c) and otherwise opened their local markets fully to competitive entry as required by Section 271. Because ILECs have not yet complied with Section 251, the Commission must go beyond the Section 272 framework by establishing rules that will be effective in a non-competitive market environment by controlling the ILECs' significant remaining monopoly power. Accordingly, the Commission should require, at a minimum, that the affiliate obtain capabilities of the ILEC network on a UNE basis only, and have substantial independent ownership.<sup>11</sup>

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<sup>10</sup> Section 272 imposes requirements relating to a BOC's interLATA affiliate upon its authorization to provide interLATA services.

<sup>11</sup> Westel also urges the Commission to require an ILEC to file a compliance plan prior to offering advanced services through an affiliate. The Commission can determine ILEC compliance with the separation standards only by examining particular fact-specific circumstances. Each compliance plan should receive public comment, and the Commission should make a determination, based upon a full record, whether the advanced services affiliate may be exempt from the obligations of Section 251(c). *E.g.*, Letter from R. Frisby, CompTel, and H. Gold, ALTS, to W. Kennard, FCC (July 29, 1998) (recommending compliance plan).

**Affiliate Interconnection Through the Purchase of UNEs.** In order to expand the types of interconnection available to all CLECs, the Commission should require advanced services affiliates to obtain traditional telecommunications capabilities through the purchase of UNEs, as opposed to through total service resale. If the ILEC affiliates are required to purchase UNEs, the nondiscrimination principle might help to ensure that CLECs such as Westel also would have this option.<sup>12</sup> If, however, an affiliate acquires the ILEC's local service via resale, then the ILEC affiliate could provide one-stop-shopping to its customers while competitors would continue to be shut out of the local marketplace as they often are today.

The Commission must take into account that total service resale under Section 251(c)(4) does not offer the same benefits and disadvantages to CLECs and ILEC affiliates alike. In particular, when Westel enters the local market through local exchange resale, it would suffer significant disadvantages that are *not relevant* to an ILEC affiliate. While Westel would be hardpressed to differentiate itself in the marketplace because it would be obligated to take whatever package the ILEC offered, an affiliate would not suffer that detriment because it does not want customers to differentiate its service from that of its parent. Indeed, any customer confusion between the retail provider and the ILEC would be welcomed by the ILEC affiliate, even though it would seriously impede a CLEC's efforts to sustain a separate market presence.

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<sup>12</sup> Westel would note that to the extent the ILEC affiliate and Westel use different types, numbers or configurations of UNEs, or benefit from different collocation and interconnection arrangements, the nondiscrimination principle may not ensure that the ILEC provides UNEs to Westel in full compliance with Section 251(c)(3).

Further, any resale pricing unfavorable or even prohibitive to Westel would not be an issue for the affiliate because any reselling would be essentially an internal transfer payment. The ILEC's affiliate would be willing to engage in total service resale even if the underlying rates were excessive (or did not permit profitable retail operations) because the combined operations of the ILEC and the affiliate together provided a reasonable profit for the ILEC's shareholders.

Along the same lines, Westel and other CLECs lose the ability to collect access charges when they enter a local market through resale, while an ILEC's affiliate would not care about such a detriment because its parent company would retain the ability to impose and collect access charges. Further, to the extent Westel provides long distance service to a customer, it would have to continue paying inflated access charges to the ILEC if it provided local service on a total service resale basis. The ILEC's affiliate would not mind paying inflated access charges because those payments are merely an internal transfer payment to its ILEC parent.

In order to equalize the playing field and to ensure that the ILEC's affiliate in fact operates in the same manner as a CLEC, the Commission should require the affiliate to purchase UNEs in order to provide retail services. This is the only way to expand the methods of interconnection and network elements available to all CLECs.

**Substantial Outside Ownership of the Affiliate.** In keeping with the principle of "true separation," the Commission should require that a substantial percentage of ownership of the affiliate be different from that of the ILEC; that is, for an affiliate not to be deemed an ILEC, it must have substantially different ownership than its ILEC parent.

This way, the affiliate would be more likely to operate according to its own independent best interests, rather than simply those of the ILEC.<sup>13</sup>

By requiring a 40% independent ownership requirement, as proposed in the *LCI Petition*, the Commission could ensure that the affiliate has obligations separate from the ILEC parent. In fact, this approach would likely ease the Commission's administrative burden. An independent ownership requirement will establish the affiliate's independence from the outset. This way, the Commission will not have to continuously monitor the ILEC-affiliate relationship. To be sure, because this requirement would significantly alter the incentives underlying the affiliate's operations, the approach is a relatively deregulatory. It would require less supervision and enforcement from the Commission, as compared to other restrictions.

**B. In addition to Adopting Additional Safeguards, the Seven Proposed Standards Must be Strengthened**

The separation requirements proposed in the *NPRM* must be both clarified and strengthened.<sup>14</sup> There must be complete separation between the ILEC and its affiliate, the affiliate must not have favorable access to information, there must be reciprocal

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<sup>13</sup> This idea originally was proposed in the *Petition of LCI International Telecom Corp. for Expedited Declaratory Rulings*, CC Docket No. 98-5, filed January 22, 1998 ("*LCI Petition*"). In the *Petition*, LCI proposed a voluntary "Fast Track" option that separated the RBOCs' wholesale and retail activities. Specifically, LCI proposed that a substantial percentage of ownership, 40 %, of the retail affiliate be in the hands of the public and outside the direct control of the RBOC. This way, the retail affiliate would operate independently from the RBOC.

<sup>14</sup> See *NPRM* at ¶ 96.

nondiscrimination obligations, and CLECs must be able to pick and choose provisions of interconnection agreements between an ILEC and its affiliate.

**Complete Separation Between the ILEC and its Affiliate.** To ensure that the ILEC “operates independently”<sup>15</sup> from its affiliate, the Commission must require total separation between the ILEC and its affiliate.<sup>16</sup> In addition to prohibiting joint ownership of switching and other telecommunications facilities and equipment, the Commission should prohibit joint ownership of *any* facilities or equipment, real property or interests in physical space. There simply is no reason to believe that ILEC advantages are limited to switching capabilities or telecommunications equipment more generally. Rather, the same types of concerns having to do with switching equipment are present with any assets owned or operated by an ILEC.<sup>17</sup>

Also, in the event an ILEC provides non-telecommunications functions and services to its affiliate, it should be required to do so on just, reasonable and nondiscriminatory terms and conditions available to all CLECs. This requirement should include both administrative functions, such as procurement, “back office” administration, and legal, etc., and non-telecommunications services, such as billing and collection.

**Nondiscrimination in Access to Information.** The Commission proposes that the ILEC, “in dealing with its advanced services affiliate may not discriminate in favor of

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<sup>15</sup> *Id.*

<sup>16</sup> To this end, Westel suggests that the Commission prohibit joint marketing and advertising, and that the ILEC should be barred from marketing the affiliate’s services.

<sup>17</sup> The affiliate should obtain these items, not through joint ownership, but rather through interconnection and unbundling pursuant to the Act.

its affiliate in the provision of any goods, services, facilities or information or in the establishment of standards.”<sup>18</sup> Westel supports the Commission’s determination in the *Non-Accounting Safeguards Order* that the word “information” “includes, but is not limited to, CPNI. . . .”<sup>19</sup> Accordingly, the Commission should make clear that an ILEC may not discriminate in the provision of *any* information to its affiliate, including the provision of CPNI.

**Reciprocal Nondiscrimination Requirement.** The ILEC prohibition against discriminating in favor of its affiliate also should apply in the other direction.<sup>20</sup> In other words, the affiliate should be prohibited from discriminating in favor of the ILEC in its provision of telecommunications facilities, services, or equipment. Without this parity, the ILEC could circumvent the statute by having its affiliate invest in equipment or facilities (which the ILEC otherwise would have invested in by itself), which the affiliate then would lease back to the ILEC parent on favorable terms.

**Pick-and-Choose.** Westel believes it is essential that CLECs be able to adopt any and all network elements, facilities, interfaces and other interconnection methods available to the ILEC affiliates.<sup>21</sup> However, it is not enough to require that an *entire* interconnection agreement be made available to unaffiliated providers. The ILEC’s

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<sup>18</sup> *NPRM* at ¶ 96, citing 47 U.S.C. § 272(c)(1).

<sup>19</sup> *Non-Accounting Safeguards Order* at ¶ 222.

<sup>20</sup> *NPRM* at ¶ 96.

<sup>21</sup> *Id.*

advanced services affiliate has an incentive to accept unfavorable provisions in its interconnection agreement in order to make it unattractive to competing providers. The solution is to require an ILEC to make interconnection or network elements provided to its affiliate available to unaffiliated CLECs on a pick-and-choose basis. This way, the unaffiliated provider can take particular elements, but is not forced to take unfavorable provisions that are intended to impede competition.

**C. Any Transfer from an ILEC to an Advanced Services Affiliate Converts the Affiliate to an Assign of the ILEC**

The Commission recognizes that, in order for an advanced services affiliate to operate outside of Section 251(c), the affiliate must not be a successor or assign of the ILEC.<sup>22</sup> Westel submits that, without exception, *any* transfer of equipment, local loops, or other assets listed in the *NPRM*, from the ILEC to its advanced services affiliate, subjects the affiliate to ILEC regulation under Section 251(c).<sup>23</sup> To be “truly separate,” the affiliate must not be able to receive (or share) assets that would give it a competitive advantage over other CLECs.

**IV. THE COLLOCATION RULES SHOULD BE AMENDED**

Currently, most ILECs are requiring Westel and other CLECs to utilize physical collocation. The physical mode of collocation, established almost a decade ago, is now outdated. Advances in technology, specifically xDSL technologies, are making it imperative that the Commission reexamine the reasonableness of available methods of

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<sup>22</sup> *NPRM* at ¶ 104.

<sup>23</sup> *Id.* at ¶¶ 106-107, 113.



collocation. Indeed, there is an urgent need to move away from “caged” environments, and toward smaller, more efficient collocation arrangements.

Westel and other CLECs promote collocation arrangements as a significant part of their competitive businesses. Currently, in each of these markets, the typical collocation method is cageless collocation. Cageless collocation is quicker, cheaper and more efficient. Westel urges the Commission to reflect the current state of technology by adopting cageless collocation, already in use in competitive markets.<sup>24</sup> As noted in the *CompTel White Paper*, ILECs should be required to offer, as an alternative to caged collocation, cageless collocation by offering (1) shared space cageless collocation, in which the equipment of multiple CLECs is collocated side by side, in an area dedicated for CLEC collocation; and (2) common space cageless collocation in which CLEC equipment is collocated in the same controlled environment as the ILEC’s own equipment, with ILEC and CLEC equipment separated only by the minimum space necessary to clearly identify each provider’s equipment.<sup>25</sup>

**National Standards.** Westel supports the adoption of additional national standards for collocation.<sup>26</sup> Any standards adopted should constitute the minimum requirements an ILEC must satisfy in its collocation practices.<sup>27</sup> Many states, including

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<sup>24</sup> See Comptel, “Uncaging Competiton: Reforming Collocation For The 21<sup>st</sup> Century,” White Paper No. 2, September, 1998 (*CompTel White Paper*).

<sup>25</sup> Also, the Commission should reform the existing collocation process in order to increase the space available for collocation and reduce delay and cost.

<sup>26</sup> *NPRM*, ¶ 123.

<sup>27</sup> *Id.*, ¶ 124.

New York, Florida and Texas, have been very active in developing innovative collocation approaches. The Commission should continue to allow states to experiment with new approaches that build upon the national standards adopted in this proceeding.

**Collocated Equipment.** Westel agrees that ILECs “should not be permitted to impede competing carriers from offering advanced services by imposing unnecessary restrictions on the type of equipment that competing carriers may collocate.”<sup>28</sup> Westel suggests that the Commission prohibit not only “unnecessary” equipment restrictions, but *all* restrictions on the types of basic telecommunications equipment, and all switching-related equipment (including routers), that may be collocated, provided the equipment fits in the available space.

Further, Westel does not believe that size restrictions are necessary at this time for collocated equipment.<sup>29</sup> To this end, Westel agrees that an ILEC affiliate, including both the advanced service affiliate contemplated in this proceeding as well as its Section 272 affiliate, should not be permitted to occupy the “last” collocation space available in an ILEC premise. By prohibiting the ILEC from being the cause of an exhaust condition, the Commission creates incentives for the ILEC to find additional collocation space, by removing retired equipment or reallocating unnecessary functions from the premises.

Westel supports adopting a national standard permitting CLECs an unrestricted ability to install their own cross connections to other collocated carriers’ space. In particular, a CLEC should be able to cross-connect to a collocation arrangement located

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<sup>28</sup> *Id.*, ¶ 129.

<sup>29</sup> *Id.*, ¶ 131.

anywhere within the same central office, including arrangements located on different floors of the end office and cross connecting to virtual collocation arrangements.

Unrestricted cross connections are undoubtedly pro-competitive, and should be explicitly mandated by the Commission.

In addition, the Commission should clarify that CLECs have a right to choose to perform these cross connections themselves, rather than hiring the ILEC to perform them. Some ILECs require CLECs to purchase a tariffed “dedicated cable support” service to accomplish such cross connects. These tariffed charges – which typically include ILEC labor and other overhead costs – unnecessarily increase the cost of collocation for CLECs. The Commission should clarify that the CLEC, not the ILEC, has the right to decide who will perform a cross connect on its behalf.

**Collocation Space.** Westel agrees with the Commission’s proposal to require ILECs to offer shared collocation space, collocation cages of any size, and cageless collocation.<sup>30</sup> Two forms of cageless collocation should be offered. First, ILECs should offer “Shared Space Collocation” whereby the ILEC establishes a “shared area” for CLECs to collocate their equipment on a cageless basis. The CLECs could install their own equipment racks or share common racks for collocated equipment within this area. There should be no unreasonable restrictions upon access by CLECs’ authorized employees to this area for purposes of installation, maintenance and repair. Second, ILECs should offer “Common Space Collocation” where CLECs and the ILEC collocate their equipment in the same conditioned environment. Security can be provided in a

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<sup>30</sup> *Id.*, ¶ 137.

cageless environment through numerous common sense measures, such as labelling, verified access, video surveillance and locking cabinets.

Regarding space preparation charges<sup>31</sup> (§ 143), Westel suggests that an initial CLEC in an area pay site preparation costs based on the percentage of the total space it is occupying. There is no reason that costs could not be allocated in this manner by all ILECs.

**Space Exhaustion.** The *NPRM* asks interested parties to propose solutions to potential space exhaustion problems. Westel believes that a “pre request” survey of ILEC premises will help parties to spot potential exhaustion conditions, which can be addressed by state commissions before they become a problem for CLECs’ desiring to establish collocation arrangements. Similarly, the Commission should establish a CLEC request procedure whereby an ILEC would provide detailed information concerning the premises, the number of collocators, and space modifications.<sup>32</sup> The ILECs should be required to conduct such surveys in advance so that they can be delivered to CLECs promptly upon request.

Also, Westel believes the FCC should establish a “walk-through” procedure when an ILEC denies a collocation request due to space limitations.<sup>33</sup> To support such a denial, the ILEC should have to provide to the CLEC and appropriate state regulatory personnel a detailed floor plan identifying all floor space, how it is being utilized, what space has

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<sup>31</sup> *Id.*, § 143.

<sup>32</sup> *Id.*, § 147.

<sup>33</sup> *Id.*, § 146.

been reserved for future use, and the planned future use of the space. The plan also should identify any equipment that is retired in place. Any requesting CLEC should be given the right (at no charge) to conduct a walk-through to verify the ILEC's allegation of lack of space.

The Commission should entitle CLECs to a rebuttable presumption in favor of granting a collocation request if a CLEC can identify a location where its request could be accommodated. Unless the ILEC produces concrete data showing why the space is not available, the CLEC's request should be granted. An ILEC should never be able to sustain a denial of a collocation request until it has removed equipment that is retired in place and reassigned space used for non-network purposes (*e.g.*, administrative and other functions that do not need to be performed in the central office).

Finally, the Commission must adopt rules to prevent an ILEC affiliate from depriving other CLECs of valuable collocation space by using too much of the available space itself. Such rules are particularly important because ILECs have an incentive to use as much space as possible, and to use it as inefficiently as possible, in order to preclude existing and prospective CLECs from being able to obtain collocation arrangements. Moreover, the ILEC affiliate is likely to be the first collocater, particularly in smaller end offices and remote terminals. Thus, the Commission's proposal may have the effect of making collocation *harder* to obtain, not easier.

Westel submits that the Commission should adopt at least three rules in response to this situation. First, the FCC should adopt a prohibition on the warehousing of collocation space by an ILEC. Second, as discussed above, the Commission should prohibit the ILEC affiliate from using the "last" available space for collocation. Third,

the Commission also should limit the affiliate's total uses to no more than 33% of all potentially available collocation space. This last rule is particularly important to ensure reasonable access for multiple CLECs to the smaller central offices.

**V. THE COMMISSION SHOULD DEFINE THE EXTENDED LOOP AS AN UNBUNDLED NETWORK ELEMENT**

Westel submits that the FCC should establish the so-called extended loop as a new network element (or clarify that the existing definition of the local loop UNE encompasses the extended loop).<sup>34</sup> This network element would be comprised of the loop, multiplexing and transport functionalities necessary to connect an end user to a CLEC's collocation facilities. The Commission plainly has authority to define the extended loop as a network element consistent with the statutory definition of the term "network element" and the Commission's express authority to implement Section 251(c)(3).<sup>35</sup> The extended loop UNE would promote the public interest because it would maximize the efficient use of CLECs' collocation arrangements and mitigate the adverse competitive impact of scarce collocation space, especially in smaller central offices.

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<sup>34</sup> 47 C.F.R. § 51.311(a). Westel submits that the extended loop fits within the literal meaning of the definition of a local loop as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and an end-user customer premises."

<sup>35</sup> 47 U.S.C. §§ 153(29); 251(c)(3); 251(d)(2).

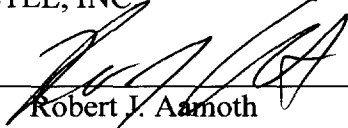
## CONCLUSION

For the foregoing reasons, Westel urges the Commission not to adopt the separate affiliate approach or, in the event the Commission moves forward with that proposal, to ensure rigorous separation between the ILEC and its affiliates as specified herein.

Respectfully submitted,

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September 25, 1998

## CERTIFICATE OF SERVICES

I, Marlene Borack, hereby certify that on this 25<sup>th</sup> day of September, 1998, I caused true and correct copies of the foregoing COMMENTS OF WESTEL, INC. to be served via hand delivery upon those persons listed below.

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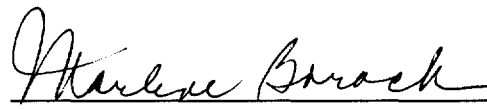
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